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Working on Waste

MAY 12 2004


May 12, 2004

Air Resources Council
C/o DES, Air Resources Division
Hazen Drive
Concord, NH 03301
Attention: Michael Sclafani, Clerk
Hand-delivered

Dear Mr. Sclafani,

Enclosed is a petition to Region 1 Environmental Protection Agency that Working on Waste filed pursuant to the Code of Federal Regulations 40 Part 70, section 70.8 (d): *Public Petitions to the Administrator*.

The petition is due today, May 12, which is 60 days following Region 1 EPA's 45-day review period for the proposed Title V permit for the Wheelabrator incinerator in Claremont.

Sincerely,

Catherine L. Leach for
Working on Waste
PO Box 641
Claremont, NH 03743

Enc.

Working on Waste

May 11, 2004

Robert Varney, Administrator
Environmental Protection Agency, Region 1
1 Congress Street
Suite 1100
Boston, MA 02114
Via Overnight Mail

Re: Proposed Title V Operating Permit
Wheelabrator Claremont Company, L.P.
Facility Notification No. 3301900029
Application No. FY96-TV010
Permit No. TV-OP-050

Dear Administrator Varney,

This correspondence concerns your oversight of the Wheelabrator garbage incinerator in Claremont, NH. It also concerns a proposed Title V operating permit for the incinerator that is presently under appeal. The following comments and requested relief are filed with the Environmental Protection Agency (EPA) pursuant to the Code of Federal Regulations 40 Part 70, section 70.8 (d): Public Petitions to the Administrator.

Background

On January, 28, 2004, the New Hampshire Department of Environmental Services (DES) issued a Proposed Title V Operating Permit (Title V Permit) for the Wheelabrator incinerator in Claremont. A document titled Findings of Fact and Director's Decision (Findings and Decision) was issued with the permit and signed by Robert Scott, Director, Air Resources Division, DES. On February 9, 2004, Working on Waste (WOW) filed an appeal with the New

Hampshire Air Resources Council (Council). See Appeal of Working on Waste (Appeal), Docket No. 04-04. The Council dismissed the Appeal, citing WOW's failure to demonstrate standing. On April 26, 2004, WOW filed with the Council a Motion for Reconsideration and a Motion to Supplement Record (Motions). The Council is expected to address the Motions at its next meeting on May 17. Copies of the Appeal and the Motions are appended hereto.

WOW is a citizens' initiative working to promote sustainable resource management in Sullivan County. Since 1985, WOW has participated in hearing and permitting activities associated with the Wheelabrator incinerator in Claremont. WOW is registered with the Charitable Trusts Unit, State of New Hampshire.

Relief Sought

The Appeal asks that the Council reverse DES' decision to issue the Title V Permit. WOW provides the following information upon which the Council is expected to rely in granting relief:

- ◇ The only factor considered for issuance of the Title V Permit is whether Wheelabrator complies with air emission standards. This focus ignores economic and social values that are protected under the NH Constitution, Bill of Rights, articles 1, 2, 8, and 38.
- ◇ WOW raised these issues with DES in an August 8, 2003 letter to Michele Andy, Title V Permit Program Manager. Here WOW also reiterated a proposal presented at a public hearing on Wheelabrator's Title V permit in July 2003. The proposal calls for professionally facilitated stakeholder meetings to thoroughly assess incinerator impacts and safe alternatives. WOW's letter is appended to the Appeal.

◇ State Representative James Phinizy, in a letter to DES Commissioner Michael Nolin dated July 29, 2003, states that DES should not grant the Title V permit for the Wheelabrator incinerator in Claremont. Rep. Phinizy also states it is "imperative" for DES to work with other public officials "towards the most sensible way in which this facility may be decommissioned in the shortest time possible." Rep. Phinizy's letter is appended to the Appeal.

◇ The Appeal references pages 8, 9, 10, 19, and 21 of the Findings and Decision signed by Director Scott. The Appeal also references pages 22-23, 32-35, and 52 of the Title V Permit. The Appeal discusses permit violations, DES' bias toward Wheelabrator's assessment of recycling in Sullivan County, DES' failure to give adequate consideration to waste management options that do not include incineration, and DES' failure to indicate how non-compliance with permit conditions would be determined and under what circumstances the permit would be revoked. The Appeal also notes that DES acknowledges that it is "essentially impossible to evaluate" the "cumulative toxic effects of the emissions of multiple pollutants and the long-term accumulation of persistent toxic pollutants." **This fact alone is reason to deny the Title V Permit.** Wheelabrator and the State are not able to show that the incinerator is safe.

◇ The Appeal references page 23 of the Director's Findings and Decision and notes DES' failure to address four issues raised in the air emissions report that WOW appended to the Appeal (Analysis of Air Emissions, Wheelabrator Claremont Company Incinerator, 1987-2002). In the above referenced letter to DES Commissioner Nolin, Representative Phinizy states that WOW has provided "the only comprehensive research on the effects of the facility from a health standpoint."

◇ The Appeal references state statute RSA 125-C:1 and explains why the Title V Permit fails to comply with DES' statutory obligation to promote public health, welfare, and safety.

In the August 8 letter to Ms. Andy referenced above, WOW called for an assessment of the benefits that would accrue with closure of the incinerator. WOW also asked DES to answer whether present DES employees have previously worked for Wheelabrator and whether present Wheelabrator employees have previously worked for DES. These issues have not been addressed by DES.

The cover page for the Title V Permit states that the permit "is issued by the New Hampshire Department of Environmental Services, Air Resources Division pursuant to its authority under New Hampshire RSA 125-C and in accordance with the provisions of Code of the Federal Regulations 40 Part 70."

Under the Code of Federal Regulations 40 Part 70, section 70.4 (b) (3) (x), the State's Attorney General must provide a legal opinion that demonstrates adequate legal authority to:

Provide an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process provided pursuant to § 70.7 (h) of this part, and any other person who could obtain judicial review of such actions under State laws.
(Emphasis added)

Filing an administrative appeal with the Council is a necessary step should one wish to seek judicial review in State court.

The public record for the Title V Permit indicates that WOW participated in the permitting process. WOW therefore has standing to appeal under the Code of Federal Regulations 40 Part 70. WOW requests that the EPA support WOW's right to have the Appeal heard by the Council.

As stated in the Appeal, issuance of the Title V Permit "impedes the broad discussion necessary to move toward safe and equitable solid waste management in Sullivan County." WOW has taken a leadership role in

pushing for this broad discussion and in organizing committees to develop a solid waste plan for Sullivan County that does not include waste incineration. WOW has proposed stakeholder meetings with a professional facilitator and has encouraged DES to be involved in the process.

Recently 601 people signed petitions in support of professionally-facilitated stakeholder meetings to study and develop safe alternatives to the Wheelabrator incinerator in Claremont. There is significant public support for a change in direction with regard to resource management in Sullivan County. A set of the signed petitions is provided under separate cover.

The public needs, wants and deserves the protections that alternatives to incineration offer. WOW therefore asks the EPA to:

- Deny the Title V Permit for the Wheelabrator incinerator based on the factors delineated above and in the appended material. These factors include permit violations and the inability to assess cumulative and synergistic impacts associated with emissions of toxic chemicals, including persistent toxic substances;
- Support the right of New Hampshire citizens and organizations to appeal Title V decisions at the State level.

Respectfully submitted to Region 1 EPA on May 11, 2004.

COPY
Katherine Lajoie
Katherine Lajoie for
Working on Waste
PO Box 641
Claremont, NH 03743

Enclosures:

- Appeal of Working on Waste, February 9, 2004
- Motion for Reconsideration and Motion to Supplement Record, Working on Waste, April 26, 2004

Copy:

- New Hampshire Air Resources Council, c/o Michael Sclafani, Clerk
- Robert Scott, Director, New Hampshire Air Resources Division
- Ida Gagnon, EPA, Region 1
- Gregory H. Smith, Counsel for Wheelabrator Claremont Company
- Peter Kendrigan, Wheelabrator Claremont Company
- Scott Pope, Mayor, Claremont, NH
- Representative James Phinizy, Chair, Sullivan County Delegation